

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
McGraw-Hill Broadcasting Company, Inc.)	Facility I.D. No. 40878
Licensee of Station KERO-TV)	NAL/Acct. No.0741420054
Bakersfield, California)	FRN: 0003476827

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: July 18, 2007**Released: July 20, 2007**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,² we find that McGraw-Hill Broadcasting Company, Inc. (the “Licensee”), licensee of Station KERO-TV, Bakersfield, California (the “Station”), apparently willfully and repeatedly violated Sections 73.3526(e)(11)(i)-(iii) of the Rules, by failing to place in the Station’s public inspection file all required TV issues/programs lists, records concerning its compliance with the children’s programming commercial limits, and Children’s Television Programming Reports.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000).

II. BACKGROUND

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁴ Subsection 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station’s public inspection file each calendar quarter. In addition, pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee’s certification, in its renewal application, of its compliance with the children’s television commercial limits imposed by Section 73.670 of the Rules.⁵ Moreover, as set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.3526(e)(11)(i)-(iii).

⁴ See 47 C.F.R. § 73.3526.

⁵ 47 C.F.R. § 73.670. This rule limits the amount of commercial matter that a commercial television station may air during children’s programming to 10.5 minutes per hour on weekends and 12 minutes on weekdays.

efforts that it has made during the quarter to serve the educational and informational needs of children. These subsections of Section 73.3526 require licensees to place TV issues/programs lists, records concerning commercial limits and Children's Television Programming Reports for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.⁶

3. On August 2, 2006, the Licensee filed its above-captioned license renewal application (FCC Form 303-S) for Station KERO-TV (the "Application"). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17, the Licensee indicated that it prepared and placed in the Station's public inspection file TV issues/programs lists in a timely manner at the end of each quarter during the license term. The Licensee reported that in reviewing its public file in preparation for the filing of the Application, however, it discovered that its TV issues/programs lists for the period prior to the first quarter of 2004 were missing. Moreover, the Licensee stated that the Station's Children's Television Programming Reports and records concerning its compliance with the children's programming commercial limits for the third and fourth quarters of 1998 and the fourth quarter of 2001 were missing from the public file. The Licensee asserted that it replaced copies of all missing documents in the Station's public inspection file in July 2006.

III. DISCUSSION

4. The Licensee's failure to retain in its Station KERO-TV public inspection file all of the required documentation constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(ii), and 73.3526(e)(11)(iii) of the Rules. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹¹

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules

⁶ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

⁷ 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹¹ 47 U.S.C. § 312(f)(2).

establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.¹² In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹³

6. In this case, numerous documents were missing from the public file. Specifically, the Licensee indicated that the Station’s TV issues/programs lists for the period prior to the first quarter of 2004 were missing. In addition, the Licensee acknowledged that the Station’s Children’s Television Programming Reports and records concerning its compliance with the children’s programming commercial limits for the third and fourth quarters of 1998 and the fourth quarter of 2001 were missing from the public file. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$10,000 for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii).

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission’s Rules, that McGraw-Hill Broadcasting Company, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii) of the Commission’s Rules.

8. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission’s Rules, that, within thirty (30) days of the release date of this NAL, McGraw-Hill Broadcasting Company, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

10. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹² See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹³ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to McGraw-Hill Broadcasting Company, Inc., Station: KERO-TV, 321 21st Street, Bakersfield, California 93301-4130, and to its counsel, Kevin P. Latek, Esquire, Dow Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ See 47 C.F.R. § 1.1914.